IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5448 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGDISHBHAI HIRABHAI VAISHNAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5448 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MS ARCHANA RAVAL, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu, has challenged the detention order passed against him by the detaining authority, by its order dated 19.2.2004

under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, the petitioner has also been served with the grounds of detention.

2. In the grounds of detention, there is a reference about seven criminal cases registered against the petitioner for allegedly dealing in country liquor illegally. All the aforesaid cases are under the Bombay Prohibition Act. The detaining authority, after considering the aforesaid cases and after reaching the subjective satisfaction, has detained him as a "bootlegger" under under PASA.

3. Learned Advocate for the petitioner submitted that the petitioner made a representation against such detention on 12.4.2004, which was received by the detaining authority on 15.4.2004, and the same was forwarded to the concerned branch of the State Government on 16.4.2004, and ultimately it was decided on 20.4.2004. It is submitted that there is a delay in forwarding the said representation, and therefore, on that ground, the petition is required to be allowed. However, the authority has not filed reply regarding such delay in deciding the representation of the petitioner, though the point is already taken in the petition.

4. The learned advocate for the petitioner has relied upon an unreported decision of this Court (Coram : A.L. Dave, J.) in Mulshankar Kalyanbhai Jani v. State of Gujarat, rendered in Special Civil Application No.9664 of 1999, on 16.3.2000, wherein on the ground of unexplained delay in despatching the representation, this Court has set aside the detention order. In paragraph 6, this Court has observed as under :-

" ... ...

6. Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on

16.11.1999 and how ti was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation.

... ..."

5. In view of the aforesaid facts and circumstances of the case and in view of the fact that even the detaining authority has not despatched the representation to the State Government in time, and even the detaining authority has not properly explained the reasons for such delay and, therefore, on the ground of delay in forwarding the representation to the State Government, this petition is required to be allowed.

6. For the foregoing reasons, this petition is allowed. The order of detention dated 19.2.2004 is quashed and set aside. The detenu, Jagdishbhai Hirabhai Vaishnav, is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

7. At this stage, learned advocate for the petitioner has voluntarily made a statement that the petitioner will not enter into Olpad Taluka upto 31st October, 2004, unless he is required to appear in any other case for attending the court. Learned advocate for the petitioner has further submitted that he is making the statement after taking instructions from the detenu. The Concerned Police Officer may also monitor this aspect so that the statement of the petitioner can be effectively taken care of by the authorities.

(P.B. Majmudar, J.)

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